IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 153 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R R JOSHIYARARA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 153 of 1999

MR NAVIN K PAHWA for Petitioner No. 1

MR IM PANDYA, APP for Respondent No. 1

MR SAMIR J DAVE for Respondent No. 2

MR AMIT J SHAH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 17/03/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. N.K.Pahwa for the petitioner- original accused. The present Cri. Revision Application has been moved against the order dated 18. 12.1998 passed below application exh.109 by ld. Special Judge, Ahmedabad in Special Case No. 14/1993 registered on the strength of the complaint for the offences punishable under Sections 13(1)(d) R/w Sec.13(2) of The Prevention of Corruption Act, 1988 and also under Sections 409 & 109 of The Indian Penal Code.

2. The ld. counsel appearing for the parties have taken me through the relevant documents produced with this Cri. Rev. Application and the stand taken by the prosecuting agency namely C.B.I. Undisputedly, the petitioner has been chargesheeted by CBI for the aforesaid offences in reference to the alleged criminal wrong committed in the year 1990, but the say of the petitioner is that there was serious dispute as to the status of the officers sent on deputation with Nehru Yuva Kendra which came into existence under the Scheme framed by the Govt. of India and favourable order treating the officials initially brought on deputation as employees of the Union of India, came to be passed in the year 1989 subsequently by Central Administrative Tribunal (hereinafter referred to as the CAT). The finding recorded by CAT was challenged before the Apex Court and vide order dated 15.12.1994, Apex Court substantially confirmed the finding recorded by the CAT. It is argued by ld. counsel Mr. Pahwa appearing for the petitioner accused that considering the finding recorded by the CAT as confirmed by the Apex Court and the language of the office order passed by Govt. of India dated 5.10.1995, it is abundantly clear that the petitioner on the date of alleged offence was as a central government employee and there is no valid sanction by Union of India obtained by CBI. Prosecuting Agency was aware that even on the date of alleged wrong, the accused was employed in the activities of Union of India, though technically was on deputation from the cadre of State Service i.e. service of Govt. of Gujarat.

3. Mr. Samir J.Dave ld. counsel appearing for CBI has pointed out that CBI has made all deliberations to ascertain the service status of the petitioner on the day on which chargesheet was filed and all subsequent main orders i.e. orders passed by the Apex Court and Govt. Resolution of the year 1995 were not even in existence at the relevant time. It is submitted by ld. counsel Mr. Pahwa that all these aspects were brought to the notice of ld. Special Judge when application exh.109 was taken up for hearing. It is rightly argued by ld. counsel Mr.

Pahwa that when accused had prayed appropriate orders by filing application exh.109 for discharge, the following options were available with the ld. Spl.Judge; viz

(i) he could have held sanction valid;

(ii) he could have deferred decision observing that validity of sanction seems to be a disputed question and on appreciation of evidence led by the parties qua its validity, appropriate finding shall be recorded;

(iii) sanction being invalid, the charge against accused can not be framed.

4. Appreciating the facts emerging from record, it would be appropriate, in light of the observations made by the Apex Court in the decisions in the case of (i) of Major Somnath v/s Union of India reported in 1971 CrLJ 1422 (1425) and (ii) Sailendra Nath Bose v/s State of Bihar, reported in AIR 1968 SC 1292, to direct the trial court to keep the question as to validity and legality of sanction open and in light of the facts and circumstances of the present case, as it would be premature to hold at this stage that sanction obtained by CBI at relevant point of time i.e. in the year 1993 is not a valid sanction to prosecution the petitioner accused.

5. While admitting this Revision Application, the Court had, by way of abundant caution, observed that if prosecuting agency so desires, it can simultaneously obtain sanction from Central Government and produce it, but it seems that prosecuting agency has not opted for that alternative. I do not agree with the submissions advanced by ld. counsel Mr. Pahwa that prosecution must fail and accused be ordered to be discharged holding that sanction is invalid in light of the status of the petitioner under dispute with different forum and the fact that the petitioner was on deputation from State Cadre to Union of India when alleged offence had been committed.

6. In view of above, Revision Application is partly allowed and impugned order dated 18.12.1998 passed by ld. Special Judge, Ahmedabad below application exh.109 in Special Case No.14/1993 indirectly holding the sanction as valid, is hereby modified to the effect that the question of validity of the sanction is ordered to be kept open and the same shall be decided on the evidence which may be led by the prosecution who has obtained sanction and the authority who has granted sanction by applying its mind on the strength of the papers produced before it. Directions accordingly.

7. Before parting with the judgment, I would like to clarify that the observations made hereinabove are tentative and same are without prejudice to the rights and contentions which may be raised by the parties before the ld. Spl.Judge qua the validity and legality of the sanction.

8. Revision Application is partly allowed. Rule is made absolute accordingly subject to the observations and directions as aforesaid. I.R. granted earlier stands vacated.

[C.K. BUCH, J]

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